

1955
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REFLECTIONS
ON THE
R E P E A L
OF THE
MARRIAGE-ACT.

Now under Consideration of
P A R L I A M E N T.

Our Maker bids increafe, who bids abstain
But our Destroyer, foe to God and Man?

MILTON,

L O N D O N,

Printed for J. FLETCHER, and Co. in St. Paul's Church-yard;
and T. DAVIES, in Russel-street, Covent-garden.

MDCCLXV.

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REFLECTIONS

ON THE

RELATIVE



MARRIAGE-ACT.

Now under Consideration of

PARLIAMENT.

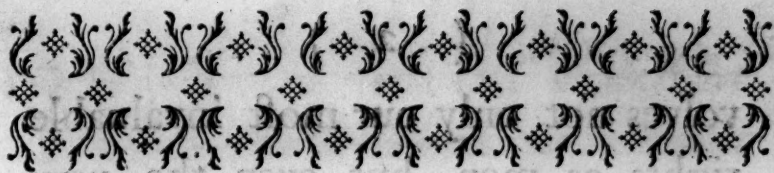
Our Maker bids increase, who bids abstain
But our Destroyer, for so God and Man?

Milton.

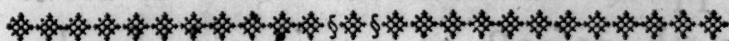
L O N D O N

Printed for J. Farrant, and Co. in St. Paul's Church-yard,
and T. Davies, in Russell-square, Covent-garden.

MDCCLXXV



REFLECTIONS
ON THE
REPEAL
OF THE
MARRIAGE-ACT.



AMIDST the tumult of parties contending for power, the discussion of civil rights and constitutional prerogative, it cannot but afford great pleasure to every thinking mind, to see the attention of the legislature once more recall'd to a question, which involves

volves not only our most invaluable rights as men, but even the very existence of our posterity. If ever any object of their disquisition requir'd a serious and dispassionate attention, none surely can be more entituled to it from its importance, than the present state of our laws in relation to marriage. If it should appear that the law now in force with respect to marriage is fundamentally impolitick, as destructive of population, but more peculiarly so as applied to this country ; if it should appear that it has been productive of evils at least equally pernicious, and perhaps more extensive, than those it was calculated to prevent ; and if it should appear that the

operation

operation of it is in fact evaded by those it was intended to restrain, but severely felt by those whom it ought never to have affected, may we not presume to hope that the legislature will think every other object immaterial, if put in competition with the redress of this Grievance.

That it is in the first place fundamentally impolitick, as destructive of population, seems to be a proposition so extreamly evident, that scarce any argument can make it plainer: but if there should be at this day any one so far prepossess'd in favour of the law, as to be totally blind to its ill consequences, he

will do well to consider, whether it is not a fundamental and established maxim in politicks, that the encouragement of marriage is the surest means of encreasing population: and then let him ask himself whether the reverse of that proposition be not equally true. Is not the necessary attention in the affair of marriage to a variety of circumstances unheard of in a state of nature, one of the greatest evils which result from civil societies? and shall we employ all our ingenuity to invent new obstacles, forge more shackles, and contrive fresh impediments to an act, in which, of all others, mankind should enjoy the most perfect freedom? If the astonishing encrease of

mankind

mankind in savage nations, is so apparently the result of their conformity to the simple dictates of nature which directs them to unite in pairs for the propagation of their species, will it not follow, that sound policy should require us, in civil society, to deviate as little as possible from that simplicity of nature which is attended with so great an increase ? All this will no doubt readily be allowed ; but it will still remain to be proved that this law does contain any regulation not essentially requisite in civil society. To prove this, it will be necessary to consider what ought to be the great object of the legislature in this point: is it not to ascertain and identify the person

son who shall be charged with the care and education of the offspring ; and obviate the confusion which would arise in matters of property from any difficulty in establishing the fact of such a contract ? These are the only objects which fall properly under the contemplation of the legislature, and these are sufficiently answered by those regulations which go to establish the notoriety of marriages : let those be as strictly enjoined and as severely enforced as the terror of penalties can make them ; but beyond this the power of human regulations ought rarely to extend ; and yet surely the clauses of residence in the late act, the consent of parents and of guardians, together
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with the limitation of age to twenty one years, cannot in this view be supposed necessary; and if not, it will follow that they are at least useless restrictions on marriage, and consequently destructive of population.

But is not some limitation of age necessary in every civil society, to prevent the purposes of marriage from being defeated, and to secure the unexperience of youth from the snares of avarice and ambition? With regard to the first, I shall only observe, that nature has in all countries prescribed the best restrictions in this matter; to which, if we add the care and influence of
 parents,

parents, we shall not find any great necessity for extending them so much farther by civil regulations. As to the latter, the same watchfulness of the parent may be a sufficient reply (in general) if taken together with that proper sense of their own dignity; for (I would avoid calling it by so equivocal an expression as family pride) which is rarely wanting in persons of high rank and fortune: I say in general, because two or three glaring instances to the contrary can never be alledged by any fair reasoner but as exceptions to the general position, the truth of which (by the bye) is confirmed from those exceptions being so notorious.

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What has been hitherto observed, tho' partly true in all countries, will acquire a greater degree of force when applied to our own: we shall therefore do well to consider whether the law (as it now stands) be not peculiarly ill adapted to this country. Let us suppose a sensible foreigner well informed of the grand object of our constitution, the equal distribution of power among the three states which compose the legislature, and made acquainted with the uniform tendency of our law, which has ever a watchful eye over the encroachments of avarice; and never fails to set its face against every attempt to perpetuity and accumulation of estates: would he

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not, thus informed, be struck with the greatest astonishment at a law, not perhaps originally intended, but actually framed to promote that very accumulation and perpetuity of estates, which our courts of justice have ever been so watchful to prevent? Must it not appear to him that the legislature had been alarmed with the too great dispersion of estates, and found that the rights of primogeniture, and other established laws amongst us, had proved insufficient to prevent the dissolution of those noble families, which compose so admirable a barrier between the throne and the people? This must immediately occur as the evil intended to be redress'd: but if
upon

upon further inquiry he should learn, that, notwithstanding the above-mentioned tendency of our laws, the great encrease of this metropolis, and daily progress of luxury among us, estates were continually lumped together, and accumulated to an enormous degree, and that it was the undoubted prerogative of the crown to incorporate such of the proprietors of those estates, as should be thought expedient into the body of the nobility, he could not but think the spirit of this particular law diametrically opposite to the exigency of our situation, or at least inconsistent with the tenor of the rest,

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If in this view the present regulations of marriage appear to be so notoriously ill adapted to this country, what shall we say of the time in which its operation is continued? Is this a time for a country so depopulated as this by a long and extensive war, and reduced to a lower ebb in its inhabitants, than even in its finances? Is this a time to perpetuate a law whose direct tendency is to prevent population, and which while it serves as a barrier to secure some great fortunes from being dispersed, may prove the means of reducing this country to a situation defenceless against its enemies? Nor let this be thought an evil of two great magnitude to be produced by

a cause, at first sight, seemingly inadequate. Those who have been at the pains to trace the great revolutions of all countries, must be convinced, that they are not so much the result of signal events which precede and accelerate the crisis, as of some unsuspected cause whose operation is silent, and the certainty of whose effect is owing to its apparent insignificance. These are the latent evils which sap and undermine every constitution, and which are seldom detected in their progress, till it be too late to apply any remedy, or till the only remedy left would prove worse than the disease. We are easily convinced of these truths in history, can
follow

follow the clue of some ill-judg'd regulation and trace it thro' all its baneful consequences, yet such is the short-sightedness of human nature, that we look only to the present, and rarely extend our view to futurity. If in any remote period of our history we had found a statute laying several restrictions on marriage, followed by a long and extensive war which had drained the nation of its inhabitants, should we not expect to see in the very next page a repeal of that law, and every possible encouragement given to marriage? This was the judicious policy of Rome after the civil wars under Julius Cæsar and Augustus, they endeavoured to promote

mote marriage by annexing every possible advantage to that state, and every discouragement to celibacy. The *jus trium liberorum*, the preference in elections to the candidate who had the greatest number of children ; the same grounds of preference given to the consul in the choice of provinces ; but above all the dispensation of a year, for every child, in the age required by law for certain offices, are the highest proofs of their attention to this great object. This indeed had always been the policy of ancient Rome, and was rather improved and extended, than originally set on foot, by Augustus. The writer is well aware that arguments drawn from regulations

tions in one country, are frequently inconclusive when applied to another of a different constitution ; but it is apprehended that men of all governments must agree, that when a country is drained of its inhabitants the first object of legislature should be what ? To enforce the restrictions on marriage ? No surely ; but to give an exemption from all such, if any should be found to exist-

Let us now proceed to examine whether it be not true that this law has been productive of evils at least equally pernicious, and perhaps more extensive than those it was calculated to prevent. The preamble of this act sets forth, that the ob-
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ject of it was the prevention of clandestine marriages; which it must be acknowledged were attended with some greivous ill consequences; all which however resulted from the want of notoriety, and are therefore to be charged on such marriages, not as rash and precipitate, but merely as clandestine for want of properly attending to this distinction; a law framed originally with the best intentions, and for the most salutary purposes, was extended in its prohibitions to a degree subversive of the very thing it was intended to regulate. What was the injury done to the state by clandestine marriages? Was it not the difficulty in many cases of establishing the fact,

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which

which threatened a confusion, without doubt, alarming to every community ; to which we may add, the scandalous practice of engaging a man in the most solemn contract of his life, at a time when perhaps he was intoxicated with liquor. No one can be so mad as to deny that these were dreadful evils which called loudly for some remedy : but how was that remedy to be applied ? Does not the question answer itself ? The mischief complained of arose from the want of notoriety : let every precaution then be taken which can apply to that evil ; let the hour of the day be limited after which the ceremony shall be void ; establish the most publick places within

within a proper distance for the celebration of it ; enforce the necessity of witnesses ; and inflict even the pains of death on any who shall dare to alter a register : these were wholesome regulations, and founded in the soundest policy : but to prevent a man from being married at four minutes notice, do not oblige him to reside in a place four weeks ; and because a girl may be seduced from her parents at twelve years of age, do not oblige her to linger on till twenty one ; or to prevent the dispersion of one rich family, preclude the existence of a thousand poor ones of more consequence to the state. Let us pause a moment, and consider what are these dreadful

evils with which the state is threatened from an union of two persons the most unequal in point of fortune ; that these are accidents sometimes of a grievous nature to the families in which they arise, is not to be disputed ; tho' no doubt aggravated by the disappointed ambition or avarice of parents, whose views are too often directed to their own aggrandisement, rather than the happiness of their children : but all this while how is the state affected ? A marriage is consummated between two parties from mutual affection ; children are born, and become useful members of the community ; but a great family is degraded, or the accumulation of an enormous estate

is

is retarded or prevented : the first of these supposed evils can never become a national concern, unless the frequency of such accidents threatened a confusion of orders ; (which is not pretended :) and as to the latter, it does not appear to be so great a calamity in any country, but least of all in England.

Yet to prevent this formidable evil, regulations have been framed no less destructive than extensive in their operation, whether we consider them as preventing marriages, and thereby injurious to population, or as annulling such marriages when made, and by that means involving both the parties and their issue, in
every

every possible calamity which marriage was instituted to prevent. It is clear that every restriction on marriage between two persons is in some degree injurious to population, and can therefore only be justified by the necessity of it in civil society: but if (as was before shewn) the notoriety of marriage is the only national concern, it will be difficult to make good the plea of necessity for many of the regulations contained in the late act. Let us suppose a young lady of seventeen or eighteen years of age, of an independent fortune, whose home perhaps has long been made disagreeable to her by the moroseness of a guardian, has engaged her affections

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ons to a person in every respect un-
 exceptionable but in the article of
 fortune ; and the guardian too much
 interested not to plead so fair an ex-
 cuse for denying his consent. What
 shall she do? Obey the dictates of
 reason and nature, which point out
 the road to her happiness, and urge
 her to become the joyful mother of
 children? No. Every avenue to that
 state is judiciously precluded by the
 present legal impediments ; and she
 must be sentenced to pine away four
 long years at least, under all the sol-
 licitude of desire, and mortification
 of disappointment : happy indeed,
 if before the end of that period, the
 decay of her health, (which God
 knows is too frequently the conse-
 quence)

quence) shall have put an end to her misery.

Oh! but there is a provision for this case, which the legislature could not but foresee would be very frequent, and have therefore permitted her to apply for redress to the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of Great Britain for the time being, who are directed to make order for such marriage, if upon examination it shall appear to be *proper*: But is this a mode of redress at all adapted to the meekness, timidity, and modesty of that sex, and at that age? Of the number who have been under the circumstances above described,

cribed, how few are there who even know of the existence of such a clause? and of those who do, how much fewer is it probable can be driven to seek protection under it? How many in fact have, I know not; but this is certain, that those whose disposition would render them fittest objects of such redress, are for the same reason the most unlikely to apply for it.

But admit that a young lady, so circumstanced, should summon up resolution enough to make such an application; does not every one foresee what an insuperable obstacle is thrown in her way by the word *proper*? which when applied to

E marriage,

marriage, is intended to convey the idea of equality, sometimes indeed of rank, but most usually of fortune. If this be the general acceptation of the word in common life, we cannot suppose that a Grave Judge, exempted by his age from those sensations which when reciprocal between two parties form the supreme happiness of youth, and accustomed from long habit to consider no contract as equal without a valuable consideration; is it probable that so dispassionate an arbitrator should declare a match to be *proper*, where nothing appears on one side but personal merit, to counterballance the weight of a hundred thousand pounds? This (it is seen) is only put by way
of

of instance ; but cases similar to this must have been the lot of thousands ; and no doubt many persons of both sexes have, from these obstacles, either gone down to the grave in silence, or become dissolute thro' despair, who might have appeared at the head of numerous families with reputation and happiness to themselves, with advantage and honour to the community. But suppose two young persons in this hard situation, should be tempted to make use of an artifice which the delusive impulse of uninstructed reason might possibly represent as not of the most heinous nature, and should obtain a license to marry by a false suggestion of their age :

what calamities might not then ensue? The marriage is expressly declared void; the wife degraded to the rank of a prostitute; and the issue sentenced irretrievably to all those disabilities, which the severity of our law inflicts on the hapless offspring for the indiscretion of their parents. Could any one of common humanity bear to see the offspring of such a marriage, after a period of twenty years, striped of his estate by an heir at law? cut off at once from those expectations to which his education, his feelings, and his ideas had been conformed, and turned destitute into the world to curse the place, if not the authors, of his birth? That many persons not-

with-

withstanding these consequences have been reduced to the necessity of using this artifice cannot be denied ; but with regard to people of rank and fortune, it will be said that the road is open to Scotland, and consequently a means given of evading this law. True, and a strong proof it is, that whenever the natural rights and freedom of mankind are circumscrib'd beyond a certain degree, they will always find some loop-hole or other to creep thro', which it is always wise in government to leave open, for the prevention of greater mischiefs. But surely the easy access to Scotland will never be pleaded in defence of this law ; since, not to mention those
alarming

alarming doubts which have arisen with regard to the validity of such marriages, if it proves any thing, it will prove too much; for nothing can be more evident than that if it is happy for us to have some means left of evading a law, it would be still happier not to be reduced to the necessity of such an evasion.

But if this outlet to Scotland be pleaded, in any respect, as an alleviation of the severity of this law, let us examine who are affected by it: and that will lead us to consider, whether it be not true, that those only are in a capacity to evade it, whom it seems calculated to restrain; and that the burden of it falls

falls on those orders of people, whose marriages it is the interest of all countries to leave as unrestrained as possible. Here then let us draw a line; and admitting that the operation of this law can extend to none but such as are capable of hiring a post-chaise to Edinburgh, let us examine the salutary effects of it upon such whose station in life confines them within its influence. These are so many, that the difficulty of stating their grievances arises solely from their number, and equal claim to redress: but as the fatal effects of this law, if traced through the several classes of the lower order of people, would swell these sheets to a volume; let us select one instance

or

or two which may serve as a specimen of the rest. The first class of men which seem to be the most deeply affected by these regulations, are unfortunately the most useful part of the community : by which every one must perceive, that I mean our sailors. It is notorious, that of that numerous body of people, there are very few but who consider a wife among the most necessary acquisitions upon coming on shore; and as they are, by a turn of mind peculiar to their profession, little concerned about the *How's and When's of life*, the bargain is usually soon struck up, and the parties put into possession of all the rights which nature had annexed to it.

This

This facility of contracting, added to the nature of their diet, has always rendered our seaport towns the most populous parts of this kingdom, and constantly supplied (notwithstanding the ravages of war) the same brave and hardy race of people, to whom Britain is so much indebted, not only for her honour, but perhaps her very existence, as a sovereign state. Is it therefore wise, or rather, is it not in the highest degree impolitick, to throw any obstacles in the way of those marriages? Yet such is the consequence of the late regulations: for now, upon application for leave to do the only service of his country which is left in the power of a sailor when on shore, the poor fellow is thunder-

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struck

struck with a number of necessary
 previous questions; which, if he
 cannot give a satisfactory answer to
 them, must prove fatal to his inten-
 tion. Is he twenty-one years old?
 Is his intended wife of the same
 age? Have they both resided four
 weeks in the parish? If not, Are
 there any parents on either side? Have
 they given their consent? These que-
 stions, when accompanied with the
 news, that if these requisites are
 wanting, the marriage cannot be so-
 lemnized, are enough to deter a man
 of less simplicity, and a more settled
 life than our sailors, and refer him
 to a shorter means of gratifying his
 inclinations, though attended with
 the worst consequences to the state.
 It would destroy the force of this
 argument

argument to dwell any longer upon it, than just to remind the reader of the many thousands who fall under the above description : and then let any sensible man consider, whether if this was the only objection to the law, it would not in our present situation be worthy the attention of the legislature to correct its influence in this instance, if in no other.

But would to heaven this was the only class of people whose marriages are prevented by this law ; which (it must be remembered) enacts, that if any person shall, from and after the twenty fifth of March 1754, solemnize matrimony in any other place than a church or publick chapel,

pel, where banns have been usually published *, he shall be transported, and all such marriages so solemnized be declared null and void to all intents and purposes whatever. Now it is well known that in many parts of this great kingdom, there are places distant fourteen and fifteen miles from any church or chapel where banns have been usually published, and consequently that the poor countryman whose substance depends on his daily labour, and whose marriage is of so much importance to the state, as usually productive of an healthy and numerous family, is obliged by this clause

* Instead of what would have answered the purpose equally well, viz. where divine service has usually been performed,

and

to lose two or three days labour, and travel fourteen or fifteen miles to get the banns pulished. This, if considered only as a grievance submitted to, seems to call upon the legislature for some redress; but if it be further remembered that every obstacle to marriage affords so many excuses to those who are not thoroughly bent upon it, and that these honest fellows (like the sailors) if not taken when in the humour for it, are very apt to change their minds, it will stand foremost among the multitude of arguments, more of which it would be needless to alledge, for new modelling our regulations of this important object.

The fatal effects of the law, as it now stands, have been rather hinted
 at,

at, than discussed; and that for two reasons; first, because the writer of these sheets was convinced, that if any thing therein contained, should engage the attention of any thinking man, he would easily suggest to himself more, and perhaps better arguments: and, secondly, because, having no desire either to swell a pamphlet, or make a parade of learning, he thought it sufficient to point out these grievances, which, how much eloquence soever they might have required for their just representation when in futuro, carry too much conviction with them at present to need any assistance from the exaggeration of oratory. Indeed the consequences of any new regulation in civil society, can rarely be known

known with certainty, but from an experience of its effects: the views, interests, and passions of mankind, operate so many different ways upon every new institution, that it is extremely difficult to foresee all the consequences that may result from a law, whose operation is very extensive: we should therefore be extremely cautious, how we reflect on the wisdom and integrity of any legislator, from seeing the ill effects which in a course of years have sprung out of any single regulation; especially when it is known, that the whole tenor of his life was one continued refutation of any such aspersions. This is a testimony, which every unprejudiced man will bear to the memory of that great personage, who, no doubt, justly alarmed

larmed at the fatal consequences of clandestine marriages, framed this law with the wisest and best intentions, and whose character the author of these sheets will never be tempted in the smallest degree to impeach, because he happens to differ in opinion with regard to the intent and object of some of these regulations: If this law has been attended with ill consequences, not foreseen by him, we should consider it in no other light, than as one of those failings inseparably annexed to the condition of humanity, and which, in characters of such transcendent merit, seem only designed to remind us, that they were but men.

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